

SEP 21 2004

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Practitioner's Docket No. 36070.010**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

☒ In re application of: Robert Gary Ellis
Application No.: 10/ 622,267 Group No. To Be Assigned
Filed: 07/17/2003 Examiner: To Be Assigned
For: PRACTICE DEVICE TO ENABLE CHILDREN TO SIMULATE SKATEBOARDING

☐ Patent No.*: _____ Issued:

*NOTE: Insert name(s) of all inventor(s) and also title for patent.

Assistant Commissioner for Patents
Washington, D.C. 20231

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I hereby certify that the following papers are being facsimile transmitted to the Patent and Trademark Office (fax No.: (703) 872-9306) on the date shown below:

1. SUPPLEMENTAL PETITION TO ACCORD ORIGINAL FILING DATE OF JULY 17, 2003
2. Copy of Office Action on Petition
3. Copy of original receipt postcard

Thomas I. Rozsa, Registration 29,210

(type or print name of person signing certification)

9/21/04

Date

Thomas I. Rozsa

Signature

(Certification of Facsimile Transmission [8-7])

SEP 21 2004

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**2 **In re Application of:**

3 Robert Gary Ellis

4 Serial No.: 10/622,267

Docket No.: 36070.010

5 Filed: 07/17/2003

Group Art Unit No.: To Be Assigned

6 Attorney: Thomas I. Rozsa

Examiner: To Be Assigned

7 Telephonc: (818) 783-0990

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9 **For: PRACTICE DEVICE TO ENABLE CHILDREN TO SIMULATE**
10 **SKATEBOARDING**

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12 **By Telecopier - (703) 872-9306**13 **OFFICE OF PETITIONS**14 **Commissioner for Patents**15 **P.O. Box 1450**16 **Alexandria, Virginia 22313-1450**

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18 **SUPPLEMENTAL PETITION TO ACCORD**19 **ORIGINAL FILING DATE OF JULY 17, 2003**20 **SIR:**

21 1. The NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION
22 was mailed on May 11, 2004 and Applicant submitted a timely Petition to Accord the
23 Original Filing Date of July 17, 2003 since the mistake was on the part of the Patent
24 Office.

25 2. The Applicant has subsequently received an Office Action on the Petition,
26 a copy of which is enclosed, stating that the application was not entitled to receive the
27 original filing date and that it would be afforded the new filing date of May 14, 2004.
28 The Office Action further states that "A postcard receipt which itemizes and properly
identifies the papers being filed would serve as *prima facie* evidence of receipt in the

1 USPTO of all the items thereon on the date stamped thereon by the USPTO." The
2 Applicant submits herewith as further evidence a copy of this postcard receipt which is
3 stamped by the USPTO on July 17, 2003 and which clearly states that 2 sheets of
4 drawings - 3 copies were enclosed with the original application filed on July 17, 2003.

5 Therefore, it is respectfully submitted that the application should be accorded the
6 original filing date of July 17, 2003 and no additional new declaration is required. If the
7 Commissioner for Patents should determine that any additional fee is due for acceptance
8 of this Supplemental Petition, then the Commissioner for Patents is hereby authorized to
9 charge our Deposit Account No. 18-2222 for any such additional fee.

10 Respectfully submitted,

11 Rozsa & Chen LLP

12 Dated: 9/21/04

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OFFICE OF PETITIONS

In re Application of
Ellis
Application No. 10/622,267
Filed: May 14, 2004
Attorney Docket No. 36070.010

ON PETITION

This decision concerns the May 14, 2004 petition which, in effect, requests withdrawal of a "Notice of Incomplete Nonprovisional Application" mailed on May 11, 2004 for the above-referenced application ("5/11/04 Notice").

The petition is **DISMISSED**.

The application was deposited on July 17, 2003. As indicated in the 5/11/04 Notice, the application was deposited without drawings and thus was not accorded a filing date. The petition then followed wherein Petitioner contends that 2 sheets of drawings containing Figures 1-9 were filed with the other application papers on May 14, 2004. It is noted that the specification deposited on July 17, 2003 describes drawings of Figures 1-9, but the USPTO file for this application does not include any drawing.

Where, as in here, there is a question regarding whether a document was received by the Office, the Office will rely on its official records, i.e., the contents of the pertinent application file, absent convincing evidence such as a properly completed postcard receipt suggesting that the Office has received and subsequently misplaced that document which is not contained in the Office file for this application.¹ A postcard receipt which itemizes and properly identifies the papers being filed would serve as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.² The petition does not enclose a copy of such a postcard to support the requested filing date.

¹ See MPEP section 513 (Rev. 2, May 2004).

² MPEP section 503 (Rev. 2, May 2004).

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The petition is, on the other hand, accompanied by counsel's declaration, stating in essence that counsel had examined the entire application, which included 2 sheets of drawings containing Figures 1-9, before it was deposited in the envelope to be mailed. This evidence has been considered, but is not persuasive. The declaration contains the declarant's recall of routine events which occurred 10 months earlier and is not more persuasive than the record of what was filed as shown by the official file.

The Office further notes that an application including at least one method or process claim but deposited without any of the drawings described in the specification may nonetheless be entitled to a filing date.³ Unfortunately, the instant application does not include any method or process claim.

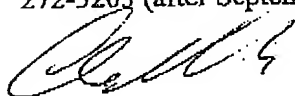
In view of the above, the application is not entitled to the requested filing date of July 17, 2003. The 5/11/04 Notice was properly mailed and will not be withdrawn. The petition is thus **dismissed**.

The application is hereby accorded a filing date of May 14, 2004, the day on which drawings of Figures 1-9 were filed.

Finally, the Office acknowledges receipt with the petition of the \$130 petition fee.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 14, 2004, using the 2 sheets of drawings (Figures 1-9) filed on that date.

Telephone inquiries should be directed to Petitions Attorney RC Tang at (703) 308-0763 (before September 15, 2004), or to the undersigned at (703) 306-5683 (before September 27, 2004) or (571) 272-3203 (after September 27, 2004).



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

JUL 30

The stamp of the Commissioner for Patents hereon acknowledges receipt of the patent application of Robert Gary Ellis for "PRACTICE DEVICE TO ENABLE CHILDREN TO SIMULATE SKATEBOARDING", including patent specification, claims and abstract; 2 sheets of drawings - 3 copies; Combined Declaration and Power of Attorney, Information Disclosure Statement; Form SB/08A and copies of 14 prior art patents and published applications; Utility Patent Application Transmittal and Duplicate; Fee Transmittal and duplicate; Nonpublication Request form; check for \$375.00.
Docket 36070.010
Express Mail No. EV 255344394 US

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10/622267
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